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Summary record of the 2696th meeting

Held at Headquarters, New York, on Monday, 15 March 2010, at 3 p.m.

Chair: Sir Nigel Rodley ..... (Vice-Chair)

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In the absence of Mr. Iwasawa, Sir Nigel Rodley, Vice-Chair, took the Chair.

The meeting was called to order at 3.10 p.m.

Consideration of reports submitted by States parties under article 40 of the Covenant *(continued)*. (CCPR/C/NZL/5; CCPR/C/NZL/Q/5 and Add.1)

Fifth periodic report of New Zealand

1. *At the invitation of the Chair, the members of the delegation of New Zealand took places at the Committee table.*

2. **Mr. Power** (New Zealand), introducing the fifth periodic report of New Zealand (CCPR/C/NZL/5), said that his Government was committed to its obligations under the Covenant and other core international human rights treaties, recognized the value of Ministerial engagement with the treaty bodies and welcomed the opportunity to share positive experiences and draw upon the expertise of the Committee. The report had been prepared in consultation with civil society and published online; the Government would also publicize the Committee's concluding observations and recommendations.

3. As a founding member of the United Nations, New Zealand was committed to the Organization and to the international promotion and protection of human rights. It continued to encourage all States to ratify international human rights instruments and had played a leading role in developing new instruments. At the national level, New Zealand had long given effect to human rights through a broad range of governmental and non-governmental institutions.

4. The unique constitutional structure of New Zealand included specific human rights protections as well as a number of other instruments and practices to safeguard fundamental rights, including references to the principles provided by the Treaty of Waitangi, concluded in 1840 with representatives of the indigenous Maori population. Within the Government, specialized bodies monitored compliance with national and international human rights law. The judiciary enjoyed complete independence and was strongly committed to the promotion of human rights. Transparency and accessible Government institutions provided great opportunities for public participation by a robust civil society, something of which the country was justly proud.

5. New Zealand had taken a number of measures during the current reporting period to further strengthen its implementation of the Covenant and there had been substantial reviews of legislation in several areas relating to human rights protections. It had also ratified the Convention on the Rights of Persons with Disabilities, the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and the Convention on the Reduction of Statelessness, and progress was being made towards ratification of the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography.

6. The New Zealand Action Plan for Human Rights had been developed by the national Human Rights Commission based on an assessment of the current status of human rights, in consultation with the public, non-governmental organizations and government agencies. At its mid-term review, the Commission had confirmed that there had been substantial progress in almost all the priority areas in the Plan. The independent prison complaints and monitoring procedures had been expanded, including through further reinforcement of the role of the Office of the Ombudsman, and the Independent Police Conduct Authority had been given expanded powers and strengthened safeguards.

7. A number of the issues raised by the Committee in its list of issues had also been the subject of debate in New Zealand and would be discussed in more detail later, including two areas of particular significance — the corporal punishment of children and the disproportionate representation of Maori in criminal justice statistics, both as offenders and as victims of crime.

8. New Zealand was an active supporter of the work of human rights defenders and welcomed the reports produced by the New Zealand Human Rights Commission as well as those of national and international non-governmental organizations. The Government maintained a strong dialogue with those organizations and welcomed the Committee's engagement with the issues that they had raised.

9. **The Chair** invited the delegation to address questions 1-16 on the list of issues (CCPR/C/NZL/Q/5).

10. **Mr. Power** (New Zealand), introducing the delegation's responses to questions 1-16 on the list of issues (CCPR/C/NZL/Q/5/Add.1), said that the Committee's first three questions related to New Zealand's constitutional arrangements, the framework for which had been outlined in the country's previous periodic reports. Within that structure, successive Governments had worked to create and maintain a human rights environment that enabled people to reach their individual and collective potential, regardless of race, gender, disability or religion.

11. The country had implemented the Covenant in a number of ways, including through the 1990 Bill of Rights Act, which gave effect to human rights protections at all stages of the legislative process. Except where there was clear authorization to the contrary, Government actions inconsistent with human rights protections could be overturned by the courts, the Human Rights Review Tribunal and other independent bodies. The Attorney-General was required to bring to the attention of the House of Representatives any Bill that he or she deemed to be inconsistent with the Bill of Rights Act. Since the introduction of the Act, the Attorney-General had reported 49 such Bills, including five in the past year. However, it was for Parliament to determine whether the proposed legislation limited a particular right or freedom and whether that limit was justified. Attorney-General opinions were regularly cited in parliamentary debate and in public submissions to parliamentary committee hearings.

12. New Zealand law followed the principle that, wherever possible, legislation was to be interpreted in a manner consistent with the Covenant and other international obligations. Where certain Covenant rights had not been directly included in the Bill of Rights Act, they had been given effect by other legislation and by common law.

13. Responding to the assertion that New Zealand did not have a formal mechanism for increasing awareness of the Covenant, he noted that the Bill of Rights Act provided for the provision of advice to parliamentarians with regard to the rights affirmed therein. As for the judiciary, in order to guarantee its independence and impartiality, the Government did not provide training. Training was, however, provided by the Institute of Professional Legal Studies, the professional development branch of the judiciary itself, whose current curriculum included consideration of domestic human rights legislation and international human rights instruments.

14. The judiciary had frequent recourse to the Covenant, which had been cited in more than 150 decisions of the superior courts, and the Bill of Rights Act, which had been referred to in more than 2,500 decisions. The Bill of Rights was not supreme law, nor did it contain a formal remedies clause. Nevertheless, the New Zealand courts had established a number of judicial remedies for victims of violations of the Covenant including monetary compensation, stays of prosecution and exclusion of evidence.

15. While the New Zealand courts had yet to determine whether they could issue formal declarations that legislation was inconsistent with the rights and freedoms contained in the Bill of Rights Act, the Supreme Court had affirmed the practice of informally "indicating" the existence of such inconsistencies. There was no formal mechanism to respond to such statements, but the Government took them very seriously. One such case was the *Hansen* case in 2007, when the majority of the Supreme Court had indicated that the Misuse of Drugs Act, by creating a presumption that a person possessing a certain amount of prohibited drugs did so for the purposes of supply and sale, was inconsistent with the presumption of innocence under the Bill of Rights Act. The Government had included that issue in the terms of reference for a review of the Act by the New Zealand Law Commission and, since the written replies had been submitted, the Law Commission had released an issues paper on the control and regulation of drugs. The paper discussed the difficulties in enforcing offences relating to supply and suggested options for addressing the problems of proof that the presumption sought to remedy, while respecting the presumption of innocence. At the current stage, the Law Commission had called for public submissions on the issue and the Government would have the opportunity to respond when the Commission released its final report.

16. Turning to question 4 on the list of issues, he said that New Zealand did not agree with the Committee's assessment that undue delay had occurred in the *E.B. v. New Zealand* case. The delays reflected the exceptional complexity and sensitivity of the case and the paramount importance accorded to the safety and well-being of children. Nevertheless, the efficiency of the Family Court system could be improved and, in response to the Committee's decision, the Government

had taken concrete steps to accelerate procedures, including by promoting less adversarial hearings. The Ministry of Justice was currently undertaking a case-flow analysis of the Family Court, tracking individual cases in order to identify delays and the reasons behind them. The Family Court Rules Committee was in the process of amending the rules to allow judges to make decisions earlier in proceedings where counsel failed to take agreed steps or to appear.

17. With regard to the compatibility of the Prisoners' and Victims' Claims Act 2005, he acknowledged the Committee's concerns and those put forward by non-governmental organizations. However, the Act did not preclude an award of compensation where appropriate. Any deduction of amounts from the compensation for payment to victims of crime was still consistent with the right to an effective remedy. Any delay was limited only to what was reasonably necessary to enable a victim to seek civil redress for damages suffered.

18. Turning to the Committee's sixth question, he noted that the New Zealand Action Plan on Human Rights had been developed by the New Zealand Human Rights Commission in 2005, using an assessment of the current status of human rights. In July 2007, the Government had directed agencies to consider the Action Plan as part of their normal business. Departments were expected to respond to requests from the Commission for information and to identify work meeting the priorities of the Action Plan in their official documents. As mentioned earlier, a mid-term review of progress under the Plan had been conducted, which had shown that although some challenges remained, there had been substantial progress made in almost all priority areas, which had been outlined in the written replies.

19. With reference to question 7 on the list of issues, he noted that New Zealand's counter-terrorism measures had been strengthened in order to meet international obligations and protect the people. The purpose of the Terrorism Suppression Amendment Act of 2007 had been to ensure compliance with Security Council resolutions 1267 and 1373. Under the Act, individuals and entities on the United Nations lists of terrorists established under those resolutions were automatically designated as terrorist entities under New Zealand law. It also enabled the Prime Minister to make additional terrorist designations; those decisions were made against statutory criteria and were open to review by the courts. Since the submission of the written replies, New Zealand had designated four groups not on the United Nations list as terrorist entities: Al Shabaab, based in Somalia; Euskadi Ta Askatasuna (ETA), in Spain; the Kurdish Workers Party (PKK), in Turkey; and Fuerzas Armadas Revolucionarias de Colombia (FARC), in Colombia. The Government had good reason to believe that each group had engaged in a range of terrorist acts and they had been similarly designated by a number of other countries.

20. Reports from non-governmental organizations had expressed concern that the automatic designation of individuals or organizations listed by the Sanctions Committee was inconsistent with procedural fairness; however, under the United Nations Charter, New Zealand was obliged to give effect to resolutions adopted by the Security Council. Although protecting sensitive information while maintaining fair procedures could be difficult, New Zealand's legislation struck a fair balance and its designations were subject to judicial oversight. The Terrorism Suppression Act provided for a triennial review by the Prime Minister of those designations not on the United Nations list. The Prime Minister was then required to report to the Parliamentary Intelligence and Security Committee on the renewal of any such designation, decisions which were again subject to judicial review.

21. With regard to the enquiries about "Operation Eight", he noted that since proceedings were still ongoing, it would be inappropriate to make any further comment than already included in the written replies. He did, however, acknowledge the criticisms that had been voiced, which would be taken into consideration in the range of ongoing court and other proceedings. Questions of whether the police had been in compliance with human rights safeguards would be determined both in the prosecution of serious criminal charges and in the civil claims and complaints made. Police actions had also been the subject of claims to two independent bodies and three United Nations special rapporteurs. All those systems for addressing complaints were working as intended. The police force was committed to mitigating any negative or disproportionate effects felt by the affected community and New Zealand's Commissioner of Police had engaged personally with the community in the aftermath of the investigation. Lessons had been learned, and would continue to be learned.

22. Moving on to question 9, he said that the Foreshore and Seabed Act 2004 had been enacted during the current reporting period. It had been criticized by the Committee on the Elimination of Racial Discrimination and by various non-governmental organizations. There had been much debate in New Zealand and consequently, a Government review of the Act was in progress, which had been commended by the Human Rights Commission, among others. The Act would likely be repealed, but no decisions had been taken about what would replace it.

23. With regard to question 10, he said that a number of institutions in New Zealand were responsible for advocating and promoting respect for the rights of immigrants, asylum-seekers and refugees, chief among them being the Office of Ethnic Affairs, established in 2001. Some examples of the work of that Office included: the development and dissemination of a tool for government policymakers to increase the Government's responsiveness to the needs of ethnic communities; and the management of a free telephone interpreting service to facilitate accurate and confidential communication between people with little or no English and their service providers. The Government had implemented various measures to help newcomers settle and integrate into society. The Settlement Strategy and its accompanying Plan of Action included initiatives at both the regional and national levels.

24. Turning to question 11, he noted that recent statistics showed that women continued to be underrepresented at senior levels of both the public and private sectors. New Zealand did not have targets to improve the representation of women in those sectors at present. It should be noted, however, that the posts of Governor General, Chief Justice, Speaker of the House, Prime Minister and Leader of the Opposition had all been held by women in recent years. The percentage of women serving on the boards of State-owned companies had increased to 35 per cent, and the percentage of women on Statutory Boards stood at 42.3 per cent. Following the last election, 41 of the 122 members of Parliament were women, exceeding the target of 30 per cent recommended by the Commission on the Status of Women. Six of the 19 Cabinet Ministers were women, also representing more than 30 per cent.

25. With regard to the question about the Taskforce for Action on Sexual Violence, one key outcome had been the formation of a strong collaborative relationship between the Government and the community sector. The final report presented by the Taskforce in July 2009 had included a number of recommendations for future action in the areas of prevention, services for victims and offenders, and the criminal justice system. Changes were also proposed to the Crimes Act 1961 and the Evidence Act 2006, changes supported by several non-governmental organizations. The Government was actively considering the report: education, health, social and justice sector agencies were analysing the recommendations to help develop a formal response to the report, which was expected in the coming months.

26. Responding to question 13 on the list of issues, he said that significant developments during the reporting period included New Zealand's ratification of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the enactment of the Corrections Act of 2004. Under section 16 of the Mental Health (Compulsory Assessment and Treatment) Act of 1992, all persons compulsorily detained in New Zealand on mental health grounds had prompt access to judicial review of their detention. New Zealand's inspection regimes were in line with the United Nations Principles for the Protection of Persons with Mental Illness and for the Improvement of Mental Health Care and included the designation of the Ombudsmen as a national preventive mechanism under the Optional Protocol to the Convention against Torture to monitor the situation of detainees in health and disability facilities. Nearly one third of the country's mental health facilities had been inspected within the previous 12 months.

27. The Department of Corrections and the Ministry of Health would continue to work together to improve the treatment of prisoners with mental illness. Existing services included a mandatory mental health screening of all incoming prisoners and provision of medical care to those identified as having mental-health-related needs. The New Zealand Human Rights Commission had found mechanisms for monitoring the situation of people detained for mental health reasons to be consistent with international standards.

28. The Government shared the Committee's concern about the high level of incarceration of Maori, who

made up 51 per cent of the total prison population. The Government's preventive approach to crime focused on improving services provided to those at risk of becoming offenders or victims. While the Government had not set specific targets for combating inequalities, it had a particular interest in reducing the overrepresentation of Maori women in prison. Addressing the drivers of crime would take some time; in the interim, the Department of Corrections had implemented a range of strategies for reducing Maori recidivism.

29. Regarding the Committee's concern about the competitive tendering of prison management, he underscored that prisoners would remain in the legal custody of the Chief Executive of the Department of Corrections. Private prison providers were required to comply with all relevant international standards and domestic legislation on the treatment and welfare of prisoners; failure to do so would result in termination of the contract. Moreover, the Ombudsmen had independent oversight of all prisons managed under the contract, and prisoners were guaranteed access to the Ombudsmen if they wished to raise a complaint.

30. In the Government's previous experience with private prison management, the prison in question had had a very low incident rate, and the contracted provider had introduced significant positive innovation, including in the range of programmes available for prisoners.

31. Noting the concerns expressed by the Committee and in the various shadow reports regarding the use of tasers, he underlined that their introduction would not constitute a departure from New Zealand's tradition of having a largely unarmed police force. Tasers would only be used by officers trained and approved to carry them, and strict operational guidelines were in place to restrict their use to situations where greater or lethal force would otherwise have been justified.

32. **Ms. Majodina**, noting with concern the written reply to question 1 on the list of issues, asked how many bills had been enacted since 1990 despite an opinion by the Attorney-General that they were inconsistent with the Bill of Rights Act. She asked what steps were being taken to remedy the limited progress made towards achieving the objectives set forth in the New Zealand Action Plan for Human Rights, in particular those related to strengthening the human rights framework of policymaking. What was the status of the Treaty of Waitangi in relation to the Bill of Rights Act?

33. On the specific question of whether New Zealand law currently prohibited discrimination on the full range of Covenant grounds, the written replies seemed to concede that discrimination on the basis of social origin and property was still not expressly prohibited. In that connection, more information on progress made towards a review of the grounds of discrimination, proposed in the New Zealand Action Plan for Human Rights, would be welcome.

34. Initiatives to inform Members of Parliament and the judiciary on the Covenant and international human rights law had some weaknesses. In that regard, the Committee welcomed the New Zealand Human Rights Commission's proposal that treaty body recommendations and reports to human rights treaty bodies should be tabled in Parliament.

35. Turning to question 2, she pointed out that the Government's oral and written replies had drawn attention to the Supreme Court ruling on the inconsistency of the Misuse of Drugs Act with the Bill of Rights Act. Noting the New Zealand Law Commission's call for public submissions on its proposed amendments to the Misuse of Drugs Act, she asked what role the New Zealand Human Rights Commission would play in that process. Lastly, the Government's position on the judicial creation of new remedies as stated in the report was inconsistent with that of the Attorney-General in the Court of Appeal in the case of *Attorney-General of New Zealand v. Chapman*.

36. Referring to question 5, she requested information on how prisoners' claims currently covered by the Prisoners' and Victims' Claims Act would be treated after key provisions of the Act expired on 1 July 2010.

37. Turning to question 13, she asked whether the inspection systems in place were fully in compliance with the Principles for the Protection of Persons with Mental Illness and for the Improvement of Mental Health Care. With regard to measures taken to address the high number of persons with mental illness in prisons, it remained unclear whether any specific aspect of the care provided in prisons could be identified as seriously defective. Of particular concern was the finding in the Auditor-General's performance

report on limited services for female and Maori inmates.

38. After conducting research on the matter, the Department of Corrections had acknowledged that the high levels of incarceration of Maori were due to some extent to institutional bias against them, though New Zealand had categorically refuted the existence of any such bias at its universal periodic review before the Human Rights Council in 2009. She wondered if the Government had taken any steps to examine the evidence gathered by the Department of Corrections, and whether any measures were envisaged for determining the effectiveness of Government programmes aimed at reducing Maori recidivism.

39. **Ms. Keller** commended New Zealand's exemplary cooperation with both the Committee and civil society. Referring to question 3, she also welcomed its willingness to consider further constitutional protection of human rights, and wondered whether it might take on board recommendations made by the New Zealand Law Society in its report to the Committee, on the adequacy of remedies available to victims of Covenant violations. It would also be useful to know whether it had considered extending the power of the Human Rights Review Tribunal to make formal declarations of inconsistency in respect of select rights in the Bill of Rights Act, not just in case of unjustified discrimination; whether the Bill of Rights Act might be amended to allow the New Zealand Human Rights Commission to oversee immigration laws and policies; and whether it intended to consider remedies for those abused in State care, in view of the testimonies of participants in the confidential forum for former inpatients of psychiatric hospitals.

40. Referring to question 4, she requested information on the outcome of the five-day hearing on the case of *E B. v. New Zealand*, regarding the author's access to one of his children.

41. Turning to question 9, she wondered how the Government planned to guarantee that the acts that would replace the Foreshore and Seabed Act of 2004 would be in line with the Covenant and the Treaty of Waitangi, and respect the rights of the parties to the Treaty. She would also like to know whether it intended to accept the United Nations Declaration on the Rights of Indigenous Peoples.

42. Referring to question 10, she enquired about the success of interim measures to guarantee that undocumented children had access to education until the passage of a new immigration act in 2009. She also wondered how the State party intended to prevent unjustified detention of asylum-seekers and refugees under the new act. In addition, further clarification was requested on the reluctance to grant permanent residence to disabled persons thought likely to be a burden on the health care system. How did the Citizenship Amendment Act of 2005, which deprived children born to non-residents of their citizenship rights, comply with the prohibition against discrimination in the Covenant? What measures had been taken to protect minority women from discrimination?

43. She asked whether data on racially motivated crime would be gathered in order to assess the extent of protection afforded to victims, and sought clarification on the justification for the differences in treatment of asylum-seekers granted refugee status.

44. Referring to question 16, she would like to know whether any studies had been conducted on the consequences of the use of tasers; whether the State party would consider relinquishing tasers in light of the 2009 concluding observations of the Committee against Torture regarding their use; how such use, if continued, would be made transparent to the public; and how it planned to address concerns over disproportionate use of tasers on persons with mental health problems and Maori or Pacific peoples.

45. **Mr. O'Flaherty**, referring to question 6, said that he would like to know whether the New Zealand Action Plan for Human Rights was a truly Government-owned plan that informed policy at the national level, or whether it was more an initiative of the New Zealand Human Rights Commission, as the report and replies seemed to indicate. If the latter was the case, information on why that was so and what could be done to increase Government ownership of the plan would be welcome.

46. With regard to question 11, he asked for an explanation of the opposition to setting recruitment targets to increase representation of women in the labour force, particularly in light of the significant improvement in female representation in the public sector when the Government last set targets of that kind. He would also like to know what was being done

to promote the representation of women at high levels in the private sector.

47. Referring to question 12, he commended the decision to consider ratifying the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography, and asked when it was expected to take place.

48. Lastly, returning to New Zealand's response to the *E.B.* case, he welcomed the news that it had sped up the judicial matrimonial procedures in response to the communication submitted to the Committee, as it demonstrated that the Government was moving towards applying the remedy suggested by the Committee. Furthermore, the fact that the communication had had such direct results served as a useful indicator of the impact of the Committee's work.

49. **Mr. Lallah** underscored the exemplary cooperation of New Zealand, the excellence of its report and the quality of the delegation's succinct yet full responses. With reference to question 7, he still needed some clarification about the compatibility of the Terrorism Suppression Amendment Act with the judicial-remedy and due-process provisions of the Covenant. Because officials like police officers sometimes made use of anti-terrorism legislation to deal with some other problem, he would like assurance that during investigations of suspected terrorist acts, arrest warrants were issued by the courts and only on the basis of substantial sworn evidence by officials. He also wondered if pretrial and trial detentions of suspected terrorists were similar in length to those in a normal criminal case, and if there was a similar obligation to bring them under judicial control within a prescribed time and bring them to trial as speedily as possible.

50. He would be interested in knowing whether the required judicial review of all designations of terrorist organizations or persons by New Zealand under its anti-terrorism legislation was done ex officio or by application to the courts; and how many such designations New Zealand had made under its own legislation and how many as a result of its obligation to comply with the Security Council designations under resolution 1267 (1999). In practice, those dual designation systems might create complications, as in cases where evidence used for the Security Council designation was inadmissible in New Zealand courts, or where the courts might decide that funds germane to a Security Council designation had been wrongly impounded. When the persons involved depended for their livelihood on such funds, were there interim measures the State party could take to alleviate the hardship caused? The Committee itself had ruled on that specific issue in *Sayadi and Vinck v. Belgium*, as had the Court of Justice of the European Union in Luxembourg, in the Kadi and the Al Barakaat International Foundation cases.

51. Regarding the events of 2007 alluded to in question 8, and bearing in mind the very precise definition of a terrorist act set out in paragraph 38 of the report, it would be interesting to learn more about the grounds for the forceful action taken by the police in certain Maori communities. Apparently, various persons had been detained and long since charged with possession of drugs and firearms in that connection, yet unaccountably, they were not scheduled for trial until 2011. He wondered if the related claims of discrimination or unjust treatment that had been lodged under the anti-terrorism laws would entail a full-fledged inquiry by the Government, with possible disciplinary measures against any officials involved in wrongdoing.

52. Concerning question 15, he believed that it was problematic for a government, in such a serious matter as the deprivation of liberty, to contract out the management of prisons to the private sector. It was not clear if New Zealand had allotted enough resources for oversight of the company managing its prisons: scrutinizing its day-to-day operations, the quality of the staff it hired, especially when it came to the highly professional duty of subsequent rehabilitation of prisoners, an article 10 requirement, and even the profit the contractor was making, which always came at the expense of quality.

53. With regard to article 2 rights, he could testify from the experience of his own country when it was emerging from colonialism that the entrenchment of the Bill of Rights had marvellous results. It was the real spirit of democracy at work: there were no post-mortems, and the State could move in or any citizen could petition the courts before serious violations occurred.

54. **Mr. Thelin** observed that although the Committee was holding a public meeting, it was public in theory only: in practice, only non-governmental organizations specifically accredited by the United Nations could

attend, and upon the decision of the Headquarters security officers, the doors to the chamber were locked to prevent the public from entering. He asked the Government of New Zealand to try to use its influence to change that situation.

55. As far as he was concerned, the report of New Zealand ranked at the very top for its excellence. He wondered if the designation decisions referred to by Mr. Lallah had in fact ever been subjected to judicial review in New Zealand. He hoped so, because the Court of Justice had ruled in the Kadi and the Al Barakaat International Foundation cases that the Security Council system for listing persons on a terrorist roster did not provide all the legal safeguards required. That made it doubly important to apply the Covenant's legal guarantees in the matter.

56. **Ms. Motoc** said that New Zealand's dealings with its Maori population was a model for the treatment of indigenous peoples. She observed that one of the reasons that so many Maori women were in prison (ques. 14) was the fact that, owing to their status in the indigenous society, many of them serving out sentences in place of their husbands. With regard to question 9, the Government, in its ongoing negotiations with the Maori on land rights and the exploitation of natural resources, especially marine resources, must take seriously into account the response of the indigenous people before reaching any final decision.

57. **Ms. Chanet**, concurring on the quality of the report and the replies, asked whether New Zealand intended to maintain every one of its reservations to the Covenant.

58. The report (paras. 50, 152-166 and 261-264) asserted that no sentence of preventive detention could be imposed retroactively. However, it was still not clear how the Government judged if a person was too dangerous to release before any new offence had been committed. Had there been any change in the law on that matter and on the frequency with which the dangerousness of the detainee was reviewed?

59. Experience had shown that persons could be removed from the lists designating them as terrorists if they could show cause. She was more concerned about the concealment from the defence attorney of evidence to be introduced against a person being tried for terrorism, for which New Zealand had rightly been criticized in the Human Rights Council. The practice was contrary to due process under article 14, paragraph 1, of the Covenant. The Committee's jurisprudence had been very firm throughout on due process — as in general comment No. 29, paragraph 8, general comment No. 24, paragraph 8, and general comment No. 32, paragraphs 5 and 6. She would like clarification on the applicable law in New Zealand and how that totally unacceptable practice could be avoided.

60. Despite all precautions in the use of tasers, the reaction of the target could never be predicted. A Canadian study had shown that tasers could even be deadly, as in the case of epileptics. She urged the Government therefore never to use such weapons.

61. It had emerged from the universal periodic review that the minimum age of legal responsibility in New Zealand was very low: 10 years of age. She wondered if the Government was reviewing the matter.

62. **Mr. Amor** said that the designation of individuals as suspected terrorists had obvious human rights implications and fuller information would be welcome, perhaps when the delegation dealt with question 19. Were persons or organizations entered on a list, for instance, before or after a very careful investigation; were their accounts impounded; what happened to their property?

63. With regard to article 18, New Zealand was doing much to encourage religious or cultural tolerance and rapprochement among the various communities. However, paragraph 288 of the report gave him pause: a judge had ruled that, while women giving evidence could not wear burkas in interests of a fair trial, they could, to satisfy their religious beliefs, testify from behind a screen. Obviously, religious freedom had to be respected — although, often, cultural attitudes were mistakenly taken as an expression of religious belief. The instance cited, at any rate, had implications also for the rights under articles 2, 3 and 26, which could not be disregarded. It was an unacceptable instance of "faceless" democracy, an unprecedented solution based on concealment and recognition of a kind of special status.

64. Lastly, he asked if the delegation included a Maori member.

65. *The meeting was suspended at 5.20 p.m. and resumed at 5.35 p.m.*

66. **Mr. Power** (New Zealand) said that one of the members of the delegation identified as Maori.

67. With respect to the sunset clauses in the Prisoners and Victims Claims Act due to expire 1 July 2010, the Cabinet was actively considering the matter and the Government's approach would become clear in the coming weeks.

68. Regarding the timeline for the ratification of the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, one legislative amendment was needed on the offence of inducing consent to adoption by a third party, currently contained as a clause in the Child and Family Protection Bill, which had been introduced in Parliament in mid-2009. The bill was expected to be adopted in 2010 and ratification of the Optional Protocol should follow immediately.

69. Regarding the entrenchment of the Bill of Rights Act of 1990, granting higher status to the Bill of Rights than to ordinary legislation would require a significant shift in the constitutional balance of power from the Parliament to the judiciary. Such a fundamental shift could lead to the unacceptable intrusion of political factors into judiciary appointments. While courts could not strike down legislation, they wielded considerable power in protecting rights and freedoms, including the judicial creation of new remedies and the interpretation of legislation in accordance with the Bill of Rights.

70. With respect to the position of the Attorney-General in *Attorney-General of New Zealand v. Chapman*, a case involving a former prisoner's claim for compensation, the Government was committed to the availability of appropriate remedies for breaches of the Bill of Rights Act, but did not consider compensation to be appropriate or available for every kind of breach of every right.

71. The Foreshore and Seabed Act of 2004 had originally vested the ownership of the public foreshore and seabed in the Crown to hold as its absolute property, thereby extinguishing any uninvestigated related customary titles. The Act provided statutory recognition for two types of customary interests: territorial customary rights, which would have been customary titles but for the Act, and non-territorial customary rights, described as ongoing activities, uses or practices. The Act allowed groups to enter into negotiation with the Crown to seek awards, subject to High Court confirmation that certain requirements had been met. Many Maori and non-Maori had criticized the Act, as had been noted by the United Nations Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people following his 2005 visit (E/CN.4/2006/78/Add.3).

72. The Government had concluded a confidence and supply agreement with the Maori Party and had committed to a review of the Act. As a first step, an independent panel of experts had been established to review the Foreshore and Seabed Act in March 2009, charged with determining whether the Act effectively recognized and provided for customary or aboriginal titles in public interests, including Maori, local government and business, and the issue of coastal marine area. If the Act was found not to provide those options, the panel had been asked to outline the most workable and efficient methods to do so. The panel had presented its report on 30 June 2009, and in November 2009, the Government announced that it was working on a replacement to the Act. The Government was continuing to meet with stakeholders and Maori leaders to discuss options.

73. Regarding the proportion of Maori women in the prison population and the effect of substitution, there were currently 485 female inmates, of which 285 identified as Maori. Corrections department data had not indicated a trend tied to substitution.

74. New Zealand did not record complaints, prosecutions or sentences related to purely racially motivated crime and was not in a position to do so in the medium term. Police monitored trends in racially motivated crime using a Crime and Safety Survey. Racially motivated crimes were prosecuted under the category of general offences such as unlawful assembly, riot, disorderly behaviour, and offensive language but were more severely punished through sentence enhancement provisions in the Sentencing Act 2002 under which hate crimes were treated as an aggravating factor.

75. Prior to conducting the trial on the use of tasers, the police had done a literature review on police use of tasers and related scientific and medical research. Thus, the developers of the standard operating procedures manual had taken into account domestic and international concerns with the manner in which the device had been used in the past. An extensive evaluation report had supported the Police Commissioner's decision to reintroduce the use of taser devices nationwide. The operating procedures for the use of taser devices were reviewed and revised regularly and contained safeguards to ensure that tasers were not used inappropriately.

76. Only officers completing a rigorous training could use tasers. They were not carried routinely and had to be checked out by a qualified officer at the beginning of a shift. The device must be kept in a locked metal box bolted to the floor of the car that could be opened only with the permission of supervisor following the assessment that a situation was likely to pose a threat of assault to the police or the public. Tasers could not be fired at the head, genitalia, or chest. Police officers were held criminally responsible for the use of excessive force during the performance of their duties and could also be subject to internal disciplinary action for any excessive use of force or misuse of a technical option. Tasers could not be used to induce compliance on a non-cooperative but non-aggressive person. In addition, they could not be carried by officers during demonstrations or used on a subject believed to be doused with or close to an accelerant or explosive or on females known to be, or expected to be, pregnant. Using multiple cycles of taser discharge was prohibited.

77. The police were responsible for providing an appropriate level of care to those who had been exposed to the application of a taser, including continuous monitoring until the individual was examined by a medical practitioner. There had been one report of a taser-related health issue in 2009, which had involved a minor probe wound.

78. Maori, Pacific islanders and people affected by mental health disorders had been overrepresented among those on which the device was used during the trial period, and the police had engaged stakeholders in discussions to address the underlying causes. Maori overrepresentation in criminal justice statistics, both as offenders and victims, was unacceptable to all parties in New Zealand. A one-day conference held to discuss the underlying causes of crime and how they should be addressed had been attended by representatives of all political parties. The Law Commission of New Zealand was nearing completion of a two-year study on the reform of the use of alcohol in New Zealand.

79. With respect to the Declaration on the Rights of Indigenous Peoples, since the universal periodic review in 2009, the Government, in consultation with the Maori Party, had been actively considering whether it could support the declaration and in what form. Many of the rights in the Declaration had been enjoyed in New Zealand for a long time. New Zealand had some of the most extensive consultation mechanisms in the world and the historical treaty settlements process was an unparalleled system of redress accepted by both Maori and non-Maori. The parameters of New Zealand's legislative framework required gradual steps towards acceptance of the Declaration.

80. Regarding the citizenship of children without a New Zealand parent, under the Citizenship Amendment Act of 2005, a person born on or after 1 January 1978 was a New Zealand citizen by birth if otherwise stateless. There had been no change from the previous law.

The meeting rose at 6 p.m.